

Abuse of Power: The CFPB and Ocwen Financial Corp

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Abstract: This paper discusses the treatment of Ocwen Financial Corp by the Consumer Financial Protection Bureau (CFPB) since 2012 and also examines the actions of private investors. The paper suggests that the CFPB has been overly harsh in its treatment of Ocwen, both measured by the amount of fines and penalties imposed and also because of the impressive record that the company has amassed in terms of helping consumers via loan modifications and permanent principal forgiveness. The author suggests that, judging by the record of fines and enforcement actions, OCN is seemingly being held to a far higher standard than any other legacy loan servicer in the U.S. The paper also suggests that the CFPB may be compromised by partisan political concerns due to the construction of the Dodd-Frank Wall Street Reform legislation, leaving the agency vulnerable to political manipulation and abuse of its extensive regulatory power.

Christopher Whalen
Whalen Global Advisors LLC
New York, NY

www.rcwhalen.com

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Mr. Whalen is an author and investment banker with more than 30 years' experience in the banking and mortgage sectors. He previously served as head of the Financial Institutions Group at Kroll Bond Rating Agency in New York.

Summary

- Over the past five years, Ocwen Financial Corp (NYSE:OCN) has been the target of a concerted campaign conducted by the Consumer Financial Protection Bureau (CFPB), state agencies and private investor groups.
- There seemingly are two separate objectives of the campaign against OCN: first, to force the sale of its large mortgage servicing portfolio to investors who want to accelerate foreclosures on troubled borrowers; Second, to impose fines and other expenses on OCN to the detriment of its shareholders and creditors.
- Among the legacy mortgage servicers in the US, OCN has had significant operational issues and, as a result, received among the harshest treatment by the CFPB as well as state agencies. Of the record \$3 billion in fines levied by the CFPB in 2014, for example, \$2 billion of those penalties came from OCN.
- OCN has one of the best records in the industry for helping consumers via loan modifications – a key regulatory benchmark – as well as distressed loan servicing.¹ Over the past five years, OCN completed 53% more HAMP modifications than the next largest servicer, industry leader Wells Fargo (NYSE:WFC). OCN has completed three times more permanent principal reduction loan modifications than any other mortgage servicer in the US.
- Most recently, in April 2017, the CFPB and several dozen states launched a new assault on OCN. The agency claimed “violations” of law that appear based on issues that the company has in many cases already corrected. This latest move by the CFPB suggests that the agency has essentially decided to punish OCN and its shareholders regardless of the firm’s actions.
- The CFPB’s treatment of OCN and other American mortgage companies seems excessively harsh. Unique among US regulatory agencies, the CFPB acts as judge and jury, bringing enforcement actions and levying fines often with few specifics supporting the action. The enormous power accorded to the CFPB under the Dodd-Frank law seemingly creates significant potential for abuse.
- Former Solicitor General Ted Olson said of the Dodd-Frank consumer agency: “The CFPB’s structure is the product of aggregating some of the most democratically unaccountable and power-centralizing features of the federal government’s administrative state.”² Nothing seemingly proves Olson’s point better than the CFPB’s treatment of OCN, its shareholders and creditors.

¹ See Ocwen Financial (NYSE:OCN) CEO Ron Faris on Q1 2017 Results, Earnings Call Transcript May 3, 2017 (Appendix 1)

² C. Ryan Barber, “Gibson Dunn’s Ted Olson, on Capitol Hill, Smacks CFPB,” *The National Law Journal*, March 21, 2017

Introduction

Ocwen Financial Corporation was founded in 1988 and is one of the largest nonbank loan servicers in the United States. Altisource Portfolio Solutions (NASDAQ:ASPS) was created in 1999 and focuses on marketing solutions for household debt, mostly mortgages, but has a range of other products. ASPS was spun out of OCN in 2009 but still derives significant revenue from its former affiliate.

OCN has serviced residential mortgage loans since 1988 and subprime loans since 1994. Following the financial crisis, investment banks such as Goldman Sachs (NYSE:GS), Barclays (NYSE:BCS), Morgan Stanley (NYSE:MS), and bankrupt GMAC's ResCap mortgage unit sold billions in subprime residential loan servicing portfolios to OCN. By 2014, through several acquisitions, OCN grew its residential servicing business to over \$500 billion in unpaid principal balance (UPB), making it the largest nonbank residential loan servicer.

OCN's concentration of troubled, private label subprime loans originated by some of Wall Street's most aggressive investment banks, and the inefficiency of internal systems and controls, made servicing its portfolio problematic.

"The information that was transferred into Ocwen's system was garbage," says Cary Sternberg, a retired former servicing executive at Doral Bank, who worked at Ocwen for five years. "Their undoing was when they started mass acquisitions. They were not careful enough in vetting how accurate the information was" about the mortgage servicing they were purchasing.³

In the changing regulatory environment after the passage of the 2010 Dodd-Frank law, banks and nonbank servicers were expected to reach a level of operational perfection that is difficult if not impossible to achieve. Massive fines levied by the CFPB made inadvertent errors in the servicing process extremely painful for large banks and legacy mortgage firms such as OCN, which saw the cost of servicing mortgages rise several fold following the creation of the CFPB.⁴

In December of 2013, the CFPB issued a consent order against OCN requiring the firm to provide \$2 billion in relief to homeowners for "systemic misconduct at every stage of the mortgage servicing process," according to CFPB director Richard Cordray.

"After examining the potential violations, we've concluded that Ocwen made troubled borrowers even more vulnerable to foreclosure," Cordray told reporters.

³ Kate Berry, "Why Regulators Waited Years Before Hitting Ocwen Again," *American Banker*, May 18, 2017

⁴ According to the Mortgage Bankers Association, the average cost of servicing a performing loan rose to \$181 in 2015, three times higher than in 2008 when the cost per loan was \$59. The average cost of servicing a non-performing loan grew to \$2,386 in 2015, almost five times higher than in 2008 when the cost per loan was \$482.

The CFPB consent order was not based upon specific allegations, but instead was simply a demand for payment from OCN and its shareholders based upon vague accusations of abusive practices. In particular, CFPB fines against OCN and other mortgage firms seem to be based upon non-evidentiary proofs and estimates instead of specific actions and events.⁵

While a growing number of firms are choosing to fight the CFPB and DOJ in court, many dozens of other banks and nonbanks have quietly paid the excessive penalties demanded by the CFPB (and also the DOJ in its enforcement of “false claims” actions on behalf of the Federal Housing Administration). The accusations by the CFPB against OCN are similar to those made against PHH Corp (NYSE:PHH), Quicken in their dispute with the Department of Justice, and many other US mortgage firms.⁶

With the December 2013 CFPB settlement, OCN agreed with the CFPB and 49 states to comply with the Dodd-Frank laws and regulations and give \$2 billion of relief through loan modification to borrowers. New York State was a party to this agreement. OCN complied fully, achieving the best record in the mortgage industry for helping consumers in default on their mortgages. For example:

- Over the past five years, OCN completed 53% more HAMP modifications than the next servicer, industry leader Wells Fargo. OCN has completed three times as many permanent principal reduction loan modifications than any other servicer in the US mortgage industry.
- In 2016, OCN completed over 14,500 modifications under the new “streamlined” program for non-GSE Mortgages (“Streamline HAMP”). OCN was responsible for over 50% of the total program through Q3’16. OCN expected to complete ~7,500 in-process HAMP modifications in Q1’17, including over 3,000 Streamline HAMP.

⁵ Mortgage industry executives say privately that CFPB personnel often impose a penalty with little or no specific justification for the description of wrong doing or amount of the fine.

⁶ The CFPB issues two main types of fines when announcing enforcement actions – redress and civil penalties. Both are assessed for violations of consumer financial protection laws, but there are differences as to where penalty payments go and the purpose they serve. The largest fines assessed by the CFPB are typically redress penalties, which the Bureau says are designed to compensate consumers for the harm caused by a particular person or company. Redress payments are normally distributed by the penalized party directly to consumers, but in some instances the payment goes to the CFPB to then be redistributed among victims. The other major type of fine assessed by the CFPB is called a civil penalty, which is put into the federal Civil Penalty Fund established by the Dodd-Frank Act. The Bureau says the money goes either towards “payments to people who were harmed by the illegal actions that gave rise to civil penalties and who aren’t expected to otherwise get full compensation” or towards “consumer education and financial literacy programs designed to help consumers.” That said, under Richard Cordray the CFPB has reserved the right to disperse the Civil Penalty Fund as it sees fit, saying that the Bureau can use money from the Fund to “pay any eligible victim from any case” at its discretion.

As the large banks sold off some of their most problematic loans, institutional investors made active efforts to lobby state and federal regulators and bond trustees as to which servicer should buy these portfolios. A number of investment firms, acting through attorneys, reportedly were strongly against the 2013 CFPB settlement with OCN. They particularly objected to the large amounts of assistance for troubled borrowers this settlement provided, mainly through principal forgiveness, which would cause losses on their investments in mortgage based securities.

LL Funds LLC, however, noted in an April 2015 report that "Ocwen deserves credit for this aggressive modification practice, and bondholders, overall, are better off as a result of it."⁷

Private Funds

The apparent endgame of the campaign against OCN was not merely to profit via short sales of the OCN and ASPS stocks, but to eventually cause the failure of the company itself and the sale of its portfolio. Lawyers representing several large investment firms were forced to publicly deny any intent to accelerate foreclosures.⁸ The fact remains, however, that since at least 2014, OCN has been the target of a singular, consistent assault by both regulators and private parties using a variety of weapons and strategies.

For example, in a February 12, 2014 article in *The New York Post*, the Gibbs & Bruns law firm, representing firms such as PIMCO and BlackRock, discussed possibly bringing a legal action against OCN by mortgage bond trustees over OCN's servicing practices.⁹ A March 12, 2014 article in *Bloomberg News* confirmed the very public statements by Gibbs & Bruns related to modification of distressed mortgages:

"DoubleLine Capital LP and Kathy Patrick, a partner at Gibbs & Bruns LLP who represents investors including BlackRock Inc. and Pacific Investment Management Co., have criticized a December settlement between the company and government as potentially harmful to mortgage-bond owners by offering credits to the servicer for reworking the loans backing their holdings."¹⁰

Significantly, in a 30-day period before the threat of possible legal action in February 2014, short selling in OCN's common stock surged. The very same day these large institutional investors announced the threat of litigation to the media, OCN's common equity went down almost 10%.

⁷ ["In Defense of Ocwen Servicing,"](#) LL Funds LLC, April 2015

⁸ Michael Corkery, "Ocwen and Bondholders Clash Over Mortgage Services, *The New York Times*, January 26, 2015

⁹ Josh Kosman, "Ocwen May Face Servicing Suit," *The New York Post*, February 12, 2014

¹⁰ Jody Shenn, "Mortgage Investors to Send Letters on Ocwen 'Servicing Abuses'," *Bloomberg News*, March 12, 2014

The table below shows the short interest in OCN during the period from September 2014 through the announcement of the lawsuit by the Gibbs & Bruns group. Notice that by May 15, 2015, the short interest in OCN equaled roughly 1/3 of total outstanding shares.

| OCN | Short Interest (%) | Short Interest (Shares/M) |
|------------|---------------------------|----------------------------------|
| 15-May-15 | 32.05 | 32.94 |
| 30-Apr-15 | 29.38 | 30.20 |
| 15-Apr-15 | 26.49 | 27.22 |
| 31-Mar-15 | 29.42 | 30.23 |
| 13-Mar-15 | 22.56 | 25.5 |
| 27-Feb-15 | 21.03 | 23.77 |
| 13-Feb-15 | 25.17 | 28.45 |
| 30-Jan-15 | 19.51 | 22.05 |
| 15-Jan-15 | 19.54 | 22.09 |
| 31-Dec-14 | 18.13 | 20.49 |
| 15-Dec-14 | 15.23 | 17.21 |
| 28-Nov-14 | 15.87 | 17.93 |
| 14-Nov-14 | 15.08 | 17.04 |
| 31-Oct-14 | 14.62 | 16.53 |
| 15-Oct-14 | 10.31 | 11.65 |
| 30-Sep-14 | 9.52 | 10.76 |

Source: CapitalIQ

The short-selling in OCN stock seemingly illustrates how big Wall Street firms and regulators targeted a legacy loan servicer with significant operational issues and ongoing regulatory disputes. For example, a week before the February 12, 2014 legal threat made towards OCN published in *The New York Post*, Benjamin Lawskey, head of the New York Department of Financial Services (NYDFS), blocked OCN from purchasing \$2.7 billion in mortgage servicing from Wells Fargo. Significantly, a number of large institutional investors were vocal in wanting to block OCN's transaction with Wells Fargo.

It is ironic to note that, in the Fall of 2012, many of the same funds that attempted to block OCN's acquisition of the portfolio from Wells Fargo in 2014 actually supported the sale of bankrupt ResCap's massive \$300 billion-plus in UPB servicing portfolio to OCN. Together with Walter Investment Management Corp (NYSE:WAC), OCN ultimately prevailed in an auction for the ResCap mortgage business with a \$3 billion bid that topped rival Nationstar Mortgage Holdings (NYSE:NSM).¹¹ As noted above, however, the acquisition of the ResCap servicing portfolio caused significant operational problems for OCN.

¹¹ Rick Rothacker, "Ocwen, Walter win bankruptcy auction for ResCap unit," *Reuters*, October 24, 2012

In 2014, OCN settled with the State of New York and agreed to a punitive agreement requiring that founder and Chairman Bill Erby step down, pay a \$150mm fine, and agree to an operations monitor. Notably the settlement with New York specified that OCN must pay a fine in cash to borrowers and could not provide any relief to consumers through loan modifications. This is precisely the same position taken by some large investors in mortgage securities, suggesting that the NYDFS was at least passively cooperating with the lobbying efforts by these investment funds.

It seems strange that NYDFS chief Ben Lawskey or New York Governor Andrew Cuomo would object to OCN helping consumers to stay in their homes, especially since loan modifications were required in the settlements. Contrary to the position taken by the State of New York, since the National Mortgage Settlement in 2013, the CFPB and other state regulators have required mortgage servicers to conduct extensive efforts at remediation of distressed loans short of foreclosure, including modification and permanent principal forgiveness.

OCN, like any distressed loan servicer, tends to take time in working with troubled borrowers because it maximizes the value of the troubled loan. The core tenets of distressed servicing are to first protect the asset by advancing principal, interest, insurance and taxes; and second, to keep the borrower in the home if possible. Yet some large Wall Street investment funds apparently wanted to accelerate the resolution of delinquent loans held by OCN and thereby increase the short-term performance of their investment in private mortgage bonds.

False Default Notices

The next phase of the campaign against OCN came on January 23rd, 2015, when a group of investors including BlackRock, PIMCO, Neuberger Berman, Metropolitan Life Insurance Company, and Kore Advisors, directed Gibbs & Bruns to issue a notice of default to the trustees of 119 RMBS deals. These mortgage bonds made up \$82 billion in AUM of OCN's mainly subprime loans. The RMBS deals represented about a third of OCN's private-label RMBS servicing portfolio.

This legal notice from the Gibbs & Bruns firm was followed up on January 24th, 2015, with a Notice of Non-Performance against OCN. This included a detailed list of allegations that allegedly constituted an event of default under the RMBS bond trust governing documents, specifically the Pooling and Servicing Agreements (PSAs).

Also on January 23, 2015, hedge fund Blue Mountain sent a Notice of Default to the Trustees of a "AAA" rated servicer advance deals issued by OCN. The notice alleged that these securities were in default due to OCN's "failure to comply with laws."

On January 26th, 2015, the California Department of Business Oversight (CDBO) announced a settlement with OCN requiring OCN to pay a \$2.5mm fine, prevent any new Mortgage Servicing Rights (MSRs) acquisitions, and agree to an outside independent monitor to explore OCN's adherence to California servicing requirements.

OCN responded to the default notices on March 22, 2015 with a letter denying that it was in default on its obligations to follow the governing trust documents and talking specifically about each of the allegations.¹² OCN noted at the time that this was not the first time that private investors had sought to block a transfer of MSRs on subprime loans to OCN:

"The claims asserted in the Notice are substantially the same claims that certain of the Holders pressed to no avail in 2013, in a failed effort to prevent the transfer of MSRs from OneWest F.S.B. ("OneWest") to Ocwen. The RMBS Trustees referred those allegations to Weston Portfolio Group, an independent expert tasked to advise them on whether Ocwen was compliant with best practices in the servicing industry and represented a viable option to take over OneWest's servicing portfolio. After receiving the expert's comprehensive review of Ocwen's servicing practices, the Trustees uniformly consented to the MSR transfer."

Significantly, in the 90 days before the release of the January 2015 notices of default by PIMCO and BlackRock, the short interest reported on OCN's common stock went up from 11.6 million shares to 22 million shares, equaling some \$260 million market value of added short positions, a sizeable increase compared with average trading volumes during that period.

OCN equity was quoted at \$56 on January 1, 2014. The almost simultaneous release of event of default (EOD) notices by the Gibbs & Bruns group, the EOD notice of Blue Mountain hedge fund, and the New York State actions drove down the price of OCN equity. OCN shares went from \$22 in late December 2014 to \$5 per share in late January of 2015, a 95% drop in value in one year.

None of these notices of default from the Gibbs & Bruns group or Blue Mountain where ever upheld. In May 2016, an independent analysis by Duff & Phelps determined that none of the allegations in the Gibbs & Bruns group's January 23, 2015, Notice of Non-Performance "were supported by evidence."¹³

In October 2016, a federal appeals court ruled that the structure of the CFPB is unconstitutional, fueling an election-year political fight over one of the most visible government responses to the 2008 financial crisis. The U.S. Court of Appeals for the District of Columbia Circuit threw out a \$109 million penalty levied against PHH, saying the structure of the CFPB gives its sole director too much power.

The Court noted with respect to Director Cordray that he has more "unilateral authority than any other officer in any of the three branches of the U.S. Government, other than the President." He has "enormous power over American business, American consumers, and the overall U.S. economy...covering everything from home finance to student loans to credit cards to banking practices." He "alone decides what

¹² [Letter from Ocwen Financial Corp to Trustees](#), March 22, 2015

¹³ [Press release by Ocwen Financial](#), May 25, 2016

rules to issue; how to enforce, when to enforce, and against whom to enforce the law; and what sanctions and penalties to impose on violators of the law.”

“This agency was on its own,” Ted Olson, former U.S. solicitor general and the lawyer for mortgage company PHH, told *Bloomberg News*. “Now it will have to respond to the guidance, leadership, oversight of whoever is the president.”

2017: CFPB Action & Short-Selling

In April of 2017, the CFPB launched a new legal attack against OCN, an event that was coordinated with state regulators in more than two dozen states as well as with other parties. Within hours of CFPB director Cordray’s public statement about OCN, securities class action lawsuits were being filed by plaintiff lawyers around the US.

As with the enforcement actions against PHH and Quicken, the new accusations against OCN made by the CFPB represented an assortment of claims. Many of the supposed violations included acts that had been previously settled, were identified by OCN itself as part of earlier settlements, or that had not occurred at all. The CFPB retroactively applied its own interpretation of the purported evidence against OCN, thereby violating OCN’s due process rights.

Most recently, before and following the announcement of the new lawsuits against OCN by the CFPB and a numbers of states, both OCN and ASPS were again the targets of concerted short-selling activity. In the days leading up to the April 20, 2017 announcement of a new lawsuit by the CFPB director Richard Cordray, the short-interest in OCN rose significantly in March – suggesting that some market participants had advance knowledge of the action by the CFPB and the states. The table below shows the short interest in OCN in the days leading up to the CFPB announcement.

| OCN | Short Interest (%) | Short Interest (Shares in Mil) |
|-----------|--------------------|--------------------------------|
| 28-Apr-17 | 16.71 | 17.63 |
| 13-Apr-17 | 13.86 | 14.51 |
| 31-Mar-17 | 14.00 | 14.65 |
| 15-Mar-17 | 16.40 | 14.49 |
| 28-Feb-17 | 13.41 | 11.84 |
| 15-Feb-17 | 14.57 | 12.87 |
| 31-Jan-17 | 14.16 | 12.51 |
| 13-Jan-17 | 15.97 | 14.11 |
| 30-Dec-16 | 17.95 | 15.86 |
| 15-Dec-16 | 14.97 | 13.22 |
| 30-Nov-16 | 13.89 | 12.27 |

Source: CapitalIQ

During April of 2017, several Wall Street firms were actively seeking to borrow shares of both OCN and ASPS, presumably in order to cover short positions for their clients. In the days prior to the CFPB announcement against OCN, the stock loan rate for ASPS went over 100% (see chart below). This suggests an extremely tight market and heavy short-selling activity in ASPS. Again, it appears that several Wall Street investment banks and/or their clients had prior knowledge of the CFPB's April 2017 enforcement actions against OCN.



Despite the strong pattern of short selling observed against OCN and ASPS, some investors find the OCN story to be compelling. Leon Cooperman, the founder and President/CEO of Omega Advisors, filed a form 13G in early May 2017 disclosing a new 6.8% passive stake (or ~8.4M shares) in Ocwen as of 5/2/17. This makes Cooperman the fourth largest holder of OCN behind Bill Erbey (13.7% of shares outstanding), John Devaney (10.0%), and Putnam Investments (7.1%), according to the latest *Bloomberg* data.

Abuse of Power

A big part of the problem with the CFPB that is illustrated by the OCN example is that the agency's mandate is deliberately vague. The CFPB is empowered by statute to take action against "unfair, deceptive and abusive practices" in financial products and services. Legal standards for "unfair" and "deceptive" exist, but the CFPB is not necessarily bound by prior interpretations. However, the concept of "abusive" is unfamiliar in regulatory law. As outlined in Title X, the bureau's authority to craft rules and enforce against "abusive" practices is particularly vague.¹⁴

¹⁴ Diane Katz, "The CFPB in Action: Consumer Bureau Harms Those It Claims to Protect," *The Heritage Foundation*, January 22, 2013.

US Courts have consistently discouraged agencies from holding parties accountable based on post-hoc interpretations of rules adopted during adjudications, but the CFPB persists in keeping its definition of the type of conduct it deems to be "abusive" private. Federal agencies are generally expected to announce and seek public comment on new regulations mandated by legislation before bringing enforcement actions. When Congress granted the bureau rulemaking powers to define abusiveness, it intended that CFPB would do the same. But instead Cordray has regulated via enforcement actions, as illustrated to an extreme degree with OCN.

The CFPB also has a bad reputation in the mortgage industry for seeking to maximize the negative publicity for targeted firms such as OCN. The CFPB's mischaracterization of actions in litigation and in consent orders through its press releases has been a concern in the financial industry since at least 2013. As Seattle Mortgage lender Washington Federal FSB noted:

We are... disappointed with the harshness of the language in the CFPB's press release, which in our view is not consistent with prior discussions, including their repeated statements to us that the order is the equivalent of a traffic ticket."¹⁵

Many of the violations alleged most recently by the CFPB and state regulators against OCN are not substantiated and, in the view of the author, may represent an abuse of power with political motives. There does not seem to be any way for OCN to remedy these supposed violations, presenting the company with a no-win situation. The CFPB seems more interested in collecting fines than in helping consumers, in part because the agency has broad discretion as to how it spends the billions of dollars collected.

In May 2017, OCN fired back at the CFPB and argued in court filings that the lawsuit should be dismissed because the CFPB is an unconstitutional agency. Several days later, OCN CEO Ron Faris put the situation with respect to the CFPB in context during the discussion of his company's Q1 2017 results.

We hope we will be successful in our efforts to move towards resuming more regular regulatory relations over time. I would highlight the progress and success we have had recently with both New York and California as evidence of our ability to do this. Moving on the CFPB allegations. To help you better understand the claims being made by the CFPB, I'd like to give you some examples of loans that we believe the CFPB has identified as having alleged inappropriate foreclosure sales. Looking at these examples and by reviewing customer files which the CFPB did not do during its investigation of Ocwen should make clear why we strongly disagree with the headline allegations.

An excerpt from the OCN Q1 2017 earnings call is included in the Appendix of this paper. During the conference call with investors, Faris rebuts several of the CFPB's specific allegations.

¹⁵ "Enforcement by the US Consumer Financial Protection Bureau," *Gibson Dunn*, March 10, 2016

The harshness of the language used against OCN in the CFPB's press releases and public statements, and a lack of detail regarding supposed violations of law, seems excessive and calculated to do maximum harm to mortgage firm's such as OCN and others. It is almost as though the CFPB merely wanted to use its regulatory power to punish OCN and its shareholders for servicing problematic subprime loans, and was not seeking a reasonable settlement and resolution that is fair to the company and, more important, helpful to consumers. Consumer protection, after all, is the biggest driver of public policy post Dodd-Frank.

More importantly, as with the PHH litigation with the CFPB and the Quicken litigation with the DOJ, the allegations by the CFPB do not seem well supported by facts. The claims basically amount to these agencies demanding an arbitrary amount of payment from the mortgage firms. In a private context, such behavior by the officials of the CFPB and the DOJ would be characterized as extortion. But because these are public agencies led by public officials, we call it "regulation."

Ronald Rubin noted in a chilling article on the CFPB for *National Review* this past December: "Conceived as a government watchdog with noble aims, the CFPB was doomed by a structure that made it an inherently political agency."¹⁶

"The high-handed activities of the CFPB are of a piece with similar activities of other administrative agencies in the Obama Administration," Richard Epstein of Hoover Institution wrote about the PHH litigation last May:

"His preferred method was to impose a huge fine, all of which is payable to the CFPB itself, to spend as it will... The excesses of the CFPB are not unique in the annals of administrative law. But they are carried forward to an unprecedented degree. What is so striking about the CFPB is that its worst structural features were incorporated by design into the Dodd-Frank statute."¹⁷

Ultimately, the actions of the CFPB and its director Richard Cordray against OCN and other mortgage firms seem to be politically motivated. Director Cordray's actions follow a clear pattern of arbitrary behavior that goes back to when the CFPB director was attorney general of the State of Ohio. During that time, Cordray attempted to extract punitive fines from a number of mortgage firms for supposed violations of law.

As in the case of OCN and PHH, in many cases these alleged violations in OH were without specific, factual basis, but instead comprised vague accusations about abusive practices. Cordray reportedly wants to run for Governor of Ohio on a progressive, consumer protection platform. Cordray has raised hundreds of thousands of dollars from the trial bar to support him in the past, including some of the largest shareholder class action law firms.

¹⁶ "Ronald Rubin, ""The Tragic Downfall of the Consumer Financial Protection Bureau" *National Review*, December 21, 2016

¹⁷ Richard Epstein, "[Tyranny within the Administrative State](#)," *Hoover Institution*, May 31, 2016

In 2016, the CFPB imposed new rules requiring financial companies to scrap arbitration contracts prohibiting their customers from participating in class actions. What better way for Cordray to to leave the CFPB than by taking another shot at OCN, thereby providing potential fees for dozens of class action law firms.¹⁸

Conclusion

As already stated, OCN has one of the best track records in the mortgage industry for assisting distressed home owners – the key criteria used in the 2013 National Mortgage Settlement. At the behest of regulators, billions of dollars in fines and expenses have been drained out of OCN over the past five years, much of it without any oversight or accountability. Many of the regulatory actions against OCN parallel CFPB statements and actions with respect to other mortgage firms such as PHH and others.

In purely financial terms, OCN has been harmed by the arbitrary actions of the CFPB as well as other regulators over the past several years. The state-appointed monitors in CA and NY, for example, presents a picture of regulatory excess and lax oversight that has cost OCN shareholders hundreds of millions of dollars in expenses. Neither the State of New York nor the State of California have reviewed and publicly accounted for the activities and expenses of these publicly mandated private monitors.

The actions of the CFPB in the case of PHH, OCN and many other public and private firms has caused a number of observers to call upon Congress to rein in the agency. The American Financial Services Association (AFSA), for example, on April 11, 2017 called on Congress to prohibit the CFPB's use of the disparate impact theory, limit its enforcement authority, remove its supervision authority, prevent the finalization of its small-dollar and arbitration rules, and halt the bureau's use of its complaint database.

The campaign against OCN seems to represent an opportunistic attack led by the CFPB, which views the company as an easy target politically and as a practical matter. Larger banks and nonbank firms are far more difficult targets, even for an agency as powerful as the CFPB. But it needs to be said that many of the errors alleged against OCN are also present in the servicing operations of other large banks and nonbank mortgage firms.

Judging by the record of fines and enforcement actions, OCN is seemingly being held to a far higher standard than any other legacy loan servicer. Of the record \$3 billion in fines levied by the CFPB in 2014, \$2 billion of those penalties came in just one case involving OCN. As former Solicitor General Olson told Congress: "More than any other administrative agency ever created by Congress, the CFPB is far outside of our constitutional structure, holds the potential for tyrannical governance, and obscures the lines of governmental accountability."

¹⁸ In the wake of the CFPB's April 2017 action, more than a dozen shareholder class action lawsuits have been filed against OCN.

House Financial Services Committee Chairman Jeb Hensarling (R-TX) said in April 2017: "Today, Mr. Cordray and his CFPB don't just act as a cop on the beat, they act as legislator, prosecutor, judge, and jury all rolled into one. The tyranny must end and the people's constitutional rights returned to them." No example seemingly better proves Chairman Hensarling's argument than the CFPB's harsh treatment of OCN and its shareholders.

Appendix

Ocwen Financial Corp CEO Ron Faris
Q1 2017 Earnings Call Transcript
May 3, 2017

[excerpt]

We hope we will be successful in our efforts to move towards resuming more regular regulatory relations over time. I would highlight the progress and success we have had recently with both New York and California as evidence of our ability to do this.

Moving on the CFPB allegations. To help you better understand the claims being made by the CFPB, I'd like to give you some examples of loans that we believe the CFPB has identified as having alleged inappropriate foreclosure sales. Looking at these examples and by reviewing customer files which the CFPB did not do during its investigation of Ocwen should make clear why we strongly disagree with the headline allegations.

Example one, this loan was transferred to Ocwen for servicing in 2010 and is already in foreclosure and almost three years delinquent. In 2011 Ocwen provided the customer HAMP modification. This government-sponsored modification allows the consumer to resume payments, clear the delinquency and remain in the home. In other words it gave the borrower a second chance.

Unfortunately, in late 2012, the consumer again stopped making payments. We attempted to contact the borrower numerous times with only limited success. In mid 2013, the consumer did engage with us about trying to do a deed in lieu of foreclosure. A deed in lieu is where the homeowner returns over the property and walked away from the debt similar to what occurs in a foreclosure sale. A deed in lieu of process is complicated because other liens on the property must clear before we can proceed.

In contrast liens are generally automatically cleared in a foreclosure sale. We tried working with the borrower of the deed in lieu for over a year. However, the homeowner did not return the executed documents required to complete the process. Finally, in October 2014 the foreclosure sale was completed. At the time of the foreclosure sale the consumer was not living in the property and they had not made a house payment in over two years. Ocwen, over a period of seven years this homeowner made 26 out of 84 possible mortgage payments. Despite our efforts to meet facts the CFPB seems to believe that this foreclosure sale was not appropriate. We disagree.

Another example of the loan where the CFPB seems to believe we foreclosed inappropriately was a loan that was modified three times between 2009 and 2013. Each time the payment was reduced with the last modification resulting in our customer benefiting from a monthly payment that was less than half of the original payment. This last modification was a share depreciation modification meaning that

our customer also benefited from some amount of principal on their loan being forgiven.

Unfortunately, following each modification our customer experienced financial difficulties and stopped making payments. Finally, in 2014 our customer pursued a deed in lieu. Ocwen actually tentatively approved the deed in lieu pending approval from the mortgage insurance company. In this case however, the mortgage insurance company rejected the deed in lieu and have Ocwen continue with foreclosure which occurred in late 2015. At the time of the foreclosure sale the loan was over two years delinquent.

In other words over a six-year period Ocwen went above and beyond try to assist our customer having provided three modifications, principal reduction, payment reductions and even attempted deed in lieu. Had the CFPB reviewed the actual loan files we believe they would have concluded that our actions were not only proper, but above and beyond what is generally accepted as industry standard. When we say Ocwen cares, it really does mean something to us and we demonstrated that by the lengths to which we were willing to go to help this customer.

In my final example, this loan was a loan that was transferred to Ocwen for servicing in 2011. At the time of transfer the loan appeared to be an investment property. Over the next couple of years Ocwen offered the borrower modifications on two separate occasions both on which included principal reductions. Unfortunately, the borrower never followed through.

In the fall of 2014 our customer again reapplied for modification assistance and was approved for modification through HAMP. As with the prior two modification offers this third offer included discounting the principal balance this time by over \$78,000. This third offer was made very close to scheduled foreclosure sale date and as a result we were unable to obtain court approval to delay the foreclosure sale. This happens. We did however, within the foreclosure sale such as last allowing the consumer to review the HAMP modification offer.

In February 2015 the HAMP offer was withdrawn because we did not received any other trial payments or the signed modification agreement back from the customer. Eventually, the customer notified us that the property was vacant and they mailed us the keys after which we then completed the foreclosure sale. Ocwen received no payments during the three plus years we serviced the loan, but we did try hard to assist the customer. It makes no sense that the CFPB deems our actions to be inappropriate.

These are tough examples. In each one a customer, a family was struggling to keep their home or investment property unsuccessfully. At Ocwen we have prided ourselves on our ability to work with homeowners in distress and to offer them modification solutions that not only help them remain in their home, but also provide better outcomes for RMBS investors that own the mortgage.

[end excerpt]